

FILED
Clerk
District Court

JUL - 9 2008

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,)	Criminal No. 08-00016
)	
Plaintiff)	
)	
v.)	ORDER RE-AFFIRMING
)	PRIOR DENIAL OF
LARRY BORJA HOCOG,)	DEFENDANT'S REQUESTED
)	JURY INSTRUCTION and
Defendant)	TAKING MATTER OFF-
_____)	CALENDAR

This morning defendant filed a trial brief in support of his request for a proposed jury instruction on the elements of the offense. Because the court has previously denied this request, *see* "Order Regarding Motions In Limine" (July 8, 2008), and because the trial brief reiterates arguments the court has already rejected, the court re-affirms its prior order, without the need of a memorandum of law from plaintiff or oral argument.

1 As the court stated in its July 8th order:

2 The Government argues that the defense should be barred from
 3 arguing under any standard other than that outlined in 21 U.S.C. § 841.
 4 The defense argues that in order to find a physician guilty of violating
 5 § 841, the finder of fact must determine that the physician acted
 6 “outside the usual course of professional practice and without a
 7 legitimate medical purpose.” Section 841(a)(1) states, in pertinent part,
 8 “[e]xcept as authorized by this subchapter, it shall be unlawful for any
 9 person knowingly or intentionally . . . to manufacture, distribute, or
 10 dispense, or possess with intent to manufacture, distribute, or dispense,
 11 a controlled substance.” 21 U.S.C. § 841. In addition, section 822(b)
 12 authorizes persons registered with the Attorney General “to
 13 manufacture, distribute, or dispense controlled substances . . . to the
 14 extent authorized by their registration and in conformity with the other
 15 provisions of this subchapter.” 21 U.S.C. § 822(b). The statute is clear:
 16 “[U]nder the plain language of the statute, a person who is not registered
 17 by the Attorney General for a given substance is not authorized to
 18 dispense it and thus is not excepted from prosecution under section
 19 841.” *United States v. Blanton*, 730 F.2d 1425, 1429 (11th Cir. 1984). If
 20 Dr. Hocog distributed or dispensed a controlled substance that he was
 21 not registered to distribute or dispense, he has violated the statute
 22 regardless of his status as a physician and regardless of the standard of
 23 care he abided by. *Id.* (“[A] physician who dispenses a controlled
 24 substance in knowing violation of the Controlled Substances Act’s
 25 registration requirement can be convicted under 21 U.S.C.A. § 841(a)(1)
 26 *without proof that the drugs were dispensed outside the bounds of professional
 practice.*” (emphasis added)).¹

21 ¹ The Court notes that the defense argued extensively at the hearing that *any*
 22 physician charged with violating 21 U.S.C. § 841 *must* be found to have acted outside
 23 the usual course of professional practice. The defense cites to three cases, none of
 24 which are apposite.

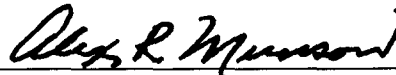
25 In *United States v. Moore*, the Court held that a physician could be prosecuted
 26 under § 841 for distributing a controlled substance that s/he was registered to
 dispense if the physician’s action fell outside the usual course of professional
 practice. 423 U.S. 122 (1975). In *United States v. Goldstein*, the Tenth Circuit held
 that physicians are exempt under § 841 if they are registered to dispense the

1 Accordingly, the Government's motion is GRANTED and the
2 defense is hereby barred from introducing evidence or making
3 arguments during trial that Dr. Hocog acted with the appropriate
4 standard of care because it is not relevant.

5 Defendant's reliance on one paragraph taken out of context in *United States v.*
6 *Feingold*, 454 F.3d 1001, 1008 (9th Cir. 2006), and based on a significantly different
7 fact situation than that presently facing the court, does not persuade the court that its
8 reliance on the near-identical fact pattern in *Blanton* was erroneous. Accordingly, the
9 court re-affirms its original order and declines to address this issue again in the future.
10 The hearing set for Friday, July 11, 2008, is taken off-calendar.
11

12 IT IS SO ORDERED.

13 DATED this 9th day of July, 2008.
14

15
16 

17 ALEX R. MUNSON

18 Judge
19

20 controlled substance and they do so in accord with the usual course of professional
21 practice. 695 F.2d 1228, 1233 (10th Cir. 1983) (applicable even where the
22 substances are ultimately being sold through an unregistered pharmacy). Finally, in
23 *United States v. Feingold*, the Ninth Circuit held that where a practitioner is accused of
24 acting "outside the usual course of professional conduct" in violation of § 841, "the
25 practitioner must have deliberately acted in this fashion in order for him to be
26 convicted of a crime." 454 F.3d 1001, 1007-08 (9th Cir. 2006).

Here, Dr. Hocog is not accused of exceeding the bounds of his usual professional practice. Instead, he is accused of distributing controlled substances without proper authority. Accordingly, the usual course of professional practice is not relevant. (Footnote in original Order of July 8, 2008).